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Judge Thomas M. Durkin  
Magistrate Judge Mary M. Rowland  
PC 9

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JUN 09, 2016

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

THOMAS G. BRUTON  
CLERK, U.S. DISTRICT COURT

Andrew James Johnston,  
Plaintiff,

Case No. (Clerk To Supply Please)

v.

FRANK JACK SODETZ III, in his official capacity,  
and his personal capacity; TIMOTHY JOSEPH  
STORINO, in his official capacity, and personal  
capacity; ROSALIE JANE LINDSAY-GUIMARAES,  
in her official capacity, and personal capacity;  
and, ROBERT G. CLARKE, in his official  
capacity, and personal capacity,  
Defendants.

**FILED**

8/31/2016

THOMAS G. BRUTON  
CLERK, U.S. DISTRICT COURT

Honorable Judge To Preside

Complaint And Civil Action

NOW COMES the Plaintiff, Andrew James Johnston,  
Pro Se, respectfully and honestly before this Honorable  
Court. Johnston, a natural person, who respectfully reserves  
his common law rights, that are based in equity, humbly seeks  
to commence this civil action by way of complaint against  
the defendants while invoking the Fourteenth Amendment's due process  
clause. In support thereof, the following is offered for consideration:



## Count 1

The Fifth Amendment of the United States' Constitution provides that "no person shall... be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V, and XIV.

Accordingly, defendant Sodetz willfully deprived Johnston of Johnston's personal property without due process of law... Specifically, Sodetz removed Johnston's personal property from an evidence storage location without Johnston's written, nor verbal consent for Sodetz to do so. Subsequently, Sodetz released the property to another individual on or about November 22, 2013, and at such time Johnston was represented by an attorney, defendant Lindsey, and, the recipient of the property was also represented by an attorney, defendant Clarke.



Count 2

Title 42, Chapter 21, § 1986 of the United States Code Service provides that "Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section [42 USCS § 1985], are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented;" 42 USCS § 1986.

Accordingly, defendants Lindsay and Clarke had knowledge of Count 1, had power to prevent or aid in preventing Count 1, and both Lindsay and Clarke neglected



or refused so to do. As a derivative of such neglect or refusal, Lindsay and Clarke paved the asphalt for Count 3 to manifest. Specifically, because Clarke did not prevent Sodetz from releasing Johnston's property to Clarke's then client by way of advise to his client not to accept such property without written approval from Johnston in line with common practice of attornment and FBI procedure, or by requesting Sodetz not to do so, Clarke neglected to prevent the conspiracy between defendants Storino and Sodetz that followed. Simultaneously, Lindsay neglected to prevent the same conspiracy, because Lindsay represented Johnston at the identical juncture, and neglected or refused to advise to object to the property's release without written approval from her client ipso facto.



Count 3

Title 42, Chapter 21, § 1985(3) of the United States Code Service provides that "If two or more persons in any State or Territory conspire, [text omitted], for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws;". 42 USCS § 1985(3) (irrelevant text omitted).

A conspiracy, between defendants Storino and Sadetz, to deprive Johnston of his property without due process of law, and in violation of 42 USCS § 1982, by releasing the property without Johnston's consent to another person...



Then, upon Johnston's movement of the Court for return or reimbursement of the property, Storino and Sdetz confirm the existence of the conspiracy above stated, by submitting incomplete and fraudulent exhibits to Storino's frivolous response to Johnston's 41(G) motion, whereby Storino and Sdetz furthered their conspiracy, collectively, to continue the deprivation of Johnston's property in violation of the Fifth Amendment as well as Johnston's standing under 42 USCS § 1982.

#### Count 4

Title 42, Chapter 21, § 1982 of the United States Code Service provides that "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof



to inherit, purchase, lease, sell, hold, and convey real and personal property." 42 USCS § 1982.

Thus, Sodetz violated Johnston's right to hold the personal property Sodetz removed from evidence storage absent Johnston's authorization. Moreover, by committing such unlawful deprivation of property, without due process of law, thereby violating the right to hold such property, Sodetz simultaneously violates 42 USCS § 1983, and § 1981(a), both of which Johnston respectfully invokes herenow.

### Count 5

As this action encompasses both the official and personal capacities of Sodetz, a tort claim against Sodetz in the dual capacities above stated under 28 USCS § 2672, and § 2679(b)(2) is made for



the unlawful conduct of Sedetz outlined in Counts 1 and 4 of this complaint.

### Foundation For All Counts

Attached, as "Exhibit A", please see the Court Order filed and dated April 21, 2016. Such order cites docket numbers 90, 92, & 94 as well as docket number 98 from the case number 13 CR 881, however Johnston reserves to incorporate the entire docket of 13 CR 881, or just a few other entries therein for evidentiary purposes if need be. As the base, 90, 92, 94, & 98 are material here.

### Jurisdiction

28 USCS § 1331 provides that "The district courts shall have original jurisdiction of all civil actions



arising under the Constitution, laws, or treaties of the United States." 28 USCS § 1331. Furthermore, 28 USCS § 1343 provides that "(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he [or she] had knowledge were about to occur and power to prevent;"



28 USC § 1343(a)(1) & (2).

Johnston respectfully stands under both of the above stated codified statutes for jurisdiction to commence this action against the defendants.

### Standing Under Deprivation

To demonstrate standing, a plaintiff must "prove that he has suffered a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision." *Remijas v. Neiman Marcus Grp., LLC*, 794 F.3d 688, 691-692 (7th Cir. 2015) (quoting *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 (2013)). Johnston respectfully asserts that because he has, and more than likely will continue to be



deprived of his personal property upon Johnston's release from prison - personal property comprised of mostly clothing which is a necessity while transitioning into the community as a convicted felon with very minimal community/family ties and seeking employment - Johnston has standing to hold the defendants liable and recover damages for the rights violations as well as the value of the property at issue, because the deprivation of the property can reasonably be inferred to hinder Johnston's ability to successfully reenter society.

### Viability And Plausibility

To state a viable claim, the plaintiff must provide "enough facts to state a claim to relief



that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible on its face if "the plaintiff pleads factual content that allows the Court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "[The] plausibility standard is not akin to a probability requirement." *Iqbal*, 556 U.S. at 678. The standard "does not imply that the district court should decide whose version to believe, or which version is more likely than not." *McReynolds v. Merrill Lynch & Co.*, 694 F.3d 873, 887 (7th Cir. 2012). Rather, "the plaintiff must give enough details about the subject-matter of the case to present a story that holds together. In other words, the court will ask itself could these things have happened,



not did they happen." *Swanson v. Citibank, N.A.*,  
614 F.3d 400, 404 (7th Cir. 2010).

Johnston respectfully asserts that his claims to  
relief meet the above stated standards...

### Relief

Count 1: Fifth Amendment violation, Johnston seeks  
to recover \$25,000.00 from Sodetz in both  
Sodetz's official, and personal capacities in either  
punitive or exemplary damages.

Count 2: §1986 violation, Johnston seeks to  
recover \$685.00 from Lindsay in both her official,  
and personal capacities in either punitive or exemplary  
damages. Likewise, Johnston seeks \$685.00 from  
Clarke in his official, and his personal capacities.



Count 3: § 1985(3) violation, Johnston seeks to recover \$685.00 from Storino in both Storino's official, and personal capacities in either punitive or exemplary damages. As a coconspirator to Storino, Johnston seeks to recover \$685.00 from Sodetz in both Sodetz's official, and personal capacities in punitive or exemplary damages.

Count 4: § 1982, § 1983, and § 1981(a) violations, Johnston seeks to recover \$685.00 from Sodetz in both his personal, and official capacities in either punitive or exemplary damages.

Count 5: 28 USC § 2672, and § 2679(b)(2) violation (intentional tort), Johnston seeks to recover \$685.00 from Sodetz in both of Sodetz's dual capacities above stated.



Attorney's Fees & Court Costs: Under 42 USCS §1988, Johnston seeks to recover attorney fees at a reasonable rate for the 10 hours Johnston spent preparing this action from defendants as well as any court costs for filing this action, or any other fees and assessments the Court may require at any future date, from the defendants either jointly or severably.

Demand For Jury Trial

Johnston humbly seeks to demand trial by jury on all counts...

## Conclusion

WHEREFORE Johnston swears under the penalty of perjury the facts and information herein this complaint and civil action are true to the best of Johnston's knowledge, belief, and cognitive ability.

Johnston moves the Court respectfully herenow for leave to proceed in forma pauperis, and thanks this Honorable Court for its valuable time and consideration.

Respectfully Submitted,

Dated: June 7, 2016 *Andrew Johnston* "Without prejudice" UCC 1-308

Andrew James Johnston, Pro Se  
P.O. Box 1000  
Oxford, Wisconsin 53952



EXHIBIT

A

- 
- April 21, 2016 Order  
in re Fed. R. Crim. P. 41(9) motion,  
and Fed. R. Civ. P. 11 motion.





Rule of Criminal Procedure 41(g), "[a] person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return." Fed. R. Crim. P. 41(g). But "if the [g]overnment no longer possesses the property at issue, no relief is available under Rule 41(g)." *United States v. Stevens*, 500 F.3d 625, 628 (7th Cir. 2007). Rule 41(g) does not authorize granting restitution or monetary relief. *United States v. Norwood*, 602 F.3d 830, 833 (7th Cir. 2010). Because it is undisputed that the government no longer has the property at issue, no relief is available to Johnston under Rule 41(g).

For this reason, the Court denies Johnston's motions seeking the return of or reimbursement for the property [dkt. nos. 90, 92 & 94]. The Court also denies Johnston's motion for sanctions [dkt. no. 98], because Federal Rule of Civil Procedure 11, the only source Johnston cites as a basis for sanctions, does not apply in this criminal proceeding.

Date: April 21, 2016

  
MATTHEW F. KENNELLY  
United States District Judge



## Proof Of Service

I, Andrew James Johnston, hereby swear to being IN FORMA PAUPERIS due to the limited resources and restrictions of my current confinement, and hereby forced to ask the Clerk of the Court to make the legally required number of copies, also EFFECTIVE SERVICE on:

Honorable Matthew F. Kennedy, U.S. District Judge  
E-mail: matthew-kennedy@ilnd.uscourts.gov

Frank Jack Sodetz III, FBI Agent  
E-mail: frank.sodetz@usdoj.gov

Timothy J. Storino, AVSA  
E-mail: tim.storino@usdoj.gov

Rosalie Jane Lindsay-Guimarães, Federal Defender  
E-mail: rose\_lindsay@fd.org

Robert G. Clarke, Attorney at Law  
E-mail: presteditate@stcglobal.net

Respectfully Submitted,

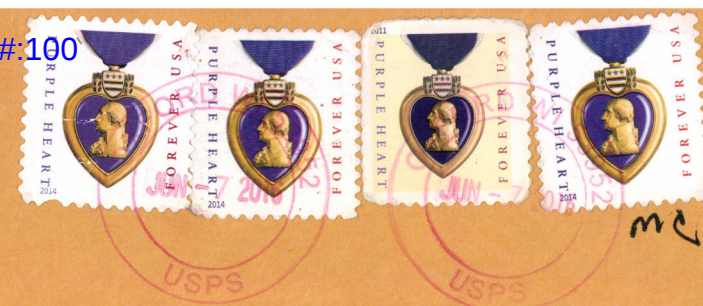
Dated: 06/07/2016 Andrew Johnston

"Without  
Prejudice"  
UCC 1-308

Andrew James Johnston, Pro Se  
P.O. Box 1000  
Oxford, Wisconsin 53952



Andrew James Johnston  
22712-424  
Federal Correctional Institution  
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JUN 09 2016 *De*

THOMAS G. BRUTON  
CLERK, U.S. DISTRICT COURT

JUN 8 2016

Date \_\_\_\_\_

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US District Court  
Chicago, IL 60604  
United States